IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision : October 30, 2006

Jug Lal and others Vs. State of Haryana

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Baldev Singh, Senior Advocate, with
Mr. Sudhir Sharma, Advocate for the appellants

Mr. Dinesh Arora, Assistant Advocate General, Haryana

Virender Singh, J.

Ompati is the deceased in this case, who was married to Pawan Kumar. She died an unnatural death on July 25, 2002 after receiving burn injuries in her matrimonial home. Jug Lal-her father-in-law, Smt. Nathiya mother-in-law, Pawan Kumar-husband, Ashok-Jeth (husband's elder brother), Chanderpati-Jethani (wife of Ashok) and Krishna alias Babbu Nanad (husband's sister), the appellants herein (for short they will be referred to as 'Accused'), were booked for this incident. Except Pawan Kumar all the accused were charged under Section 302/34 IPC. All of them were also charged under Sections 304-B IPC, 498-A IPC and 406 IPC. Vide impugned judgment of learned Sessions Judge, Bhiwani dated 31-1-

2005 all the accused have been convicted under Sections 302 read with Section 34 IPC, 498-A and 304-B IPC. However, all of them have been acquitted of the offence under Section 406 IPC. Vide order dated 2-2-2005, they have been sentenced as under:

Under Section 304-B IPC	Rigorous imprisonment for a period of seven years.
Under Section 498-A IPC	Rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- each, in default of payment of fine to further undergo RI for six months.
Under Section 302 read with Section 34 IPC.	All the accused except Pawan Kumar sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- each, in default of payment thereof to further undergo RI for a period of six months.

All the substantive sentences are ordered to run concurrently.

Aggrieved by the said judgment of conviction and sentence, they have preferred the instant appeal.

The prosecution case primarily rests upon the dying declaration (Exhibit PF) of Smt. Ompati (since deceased) recorded by Ms. Roopam, Judicial Magistrate Ist Class/Duty Magistrate , Bhiwani (PW-4),

in General Hospital, Bhiwani on a written application (Exhibit PD) moved by ASI Rajbir Singh (PW-13) and after seeking the opinion (Exhibit PE) about fitness of the patient from Dr. Ved Pal (PW-5), recorded the dying declaration. The said dying declaration when translated into English reads as under:

> Statement of Smt. Ompati wife of Pawan, aged 22 years, house wife, resident of village Pokharwas on S.A.
>
> "Stated that I was married about 3 years ago. I have no issue. From the time of marriage, my husband, mother-in-law, father-in-law, Jeth Ashokj and Jethani Chander Pati, Nanad Babbu (married) used to torture me on account of dowry. Last year also I was turned out due to torture of dowry. At that time I stayed in my parental home for 8-9 months. Now, for the last six months, I am residing with my in-laws. My Jeth and Jethani are separate, but are residing in the same house. About 2-3 months ago, my in-laws asked me to bring Rs.50,000/- from my father. When I refused they started torturnig me more. My husband has gone to Surat for the last one month. Today, at about 2-00p.m.(afternoon) my in-laws

quarreled with me. My Nanad had come to her parental home about 10 days ago. Firstly, my mother-in-law, father-in-law, Nathiya and Jug Lal, sprinkled oil upon me and then mother-in-law ignited me. When I tried to run out, then my father-in-law closed the door. When I raised alarm to rescue myself then my Jeth, Jethani and Nanad stated that let I be burnt. They were outside the door. My in-laws intentionally tried to kill me by burning on account of demand of dowry. Legal action should be taken against them".

RO & AC
RTI
Ompati

Signed
Ms. Roopam,
Duty/J.M.I.C.,
Bhiwani.
25-7-02, 8-10 p.m.

On the basis of the aforesaid statement formal FIR (Exhibit PB) was initially recorded under Sections 307/498-A/34 IPC in Police Station Tosham. Injured Ompati was then referred to the Post Graduate Institute of Medical Sciences (P.G.I.M.S.) Rohtak, where she died on the same day. Thereupon Section 302 IPC was incorporated. Inquest report (Exhibit PN/2) was prepared by ASI Rajbir Singh in the hospital and the dead body was sent up for postmortem examination. ASI Rajbir Singh then inspected the spot and collected certain pieces of burnt clothes. List of

certain dowry articles and a copy of the Kanyadan were taken into possession. The sealed parcels of the burnt clothes etc. were prepared at the spot and were sent to the Forensic Science Laboratory.

The investigation conducted in this case was got verified by the Station House Officer and the Deputy Superintendent of Police on 4.8.2002. Ashok, Chanderpati, Krishna alias Babu and Nathia appellants were found innocent. On 8-8-2002 Jug Lal, Pawan and Nathia appellants were arrested in this case. Jug Lal appellant made a disclosure statement (Exhibit PL), pursuant to which he got recovered one empty bottle of plastic along with match box, which were taken into possession vide memo. Exhibit PL/1. After completion of investigation, report under Section 173 of the Code of Criminal Procedure was presented against Jug Lal, Nathia and Pawan Kumar appellants only. Subsequently on an application moved under Section 319 of the Code of Criminal Procedure, the remaining three accused (Ashok, Chanderpati and Krishna alias Babbu) were also summoned to face trial. Fresh charges were then framed against all the accused as indicated in the opening para of our judgment.

In order to substantiate the charges, the prosecution has examined the following witnesses:

HC Satpal Singh (PW1) had tendered into evidence his affidavit (Exhibit PA). He was a witness of formal nature.

Constable Ram Kumar (PW2) had delivered the special report

(Exhibit PB) of this case to the Illaqa Magistrate and other higher police officials on 25-7-2002.

Constable Jagbir Singh (PW3) had also tendered his affidavit (Exhibit PC).

Ms. Roopam, Judicial Magistrate Ist Class, Bhiwani (PW4) had stated that on 25-7-2002 on police request (Exhibit PD), she had gone to the General Hospital, Bhiwani where Ompati, wife of Pawan Kumar was lying admitted in the Emergency Ward. After getting the opinion (Exhibit PE) of the concerned doctor, she recorded her statement (Exhibit PF). She had also proved the thumb impression of Ompati at two points on the said statement. Exhibit PF/1 is the certificate of the doctor to the effect that that the patient remained fit during recording of her statement. She has also proved the statement of Ompati.

She had further stated that she had satisfied herself that the patient was fit to make statement and in this regard she had prepared the certificate (Exhibit PG).

PW5 Dr. Vedpal, Medical Officer, General Hospital, Bhiwani had medico legally examined Ompati on 25.7.2002 she was brought by Smt. Chanderpati and Bhateri her sister-in-law. According to the medical examination, Ompati suffered 80% superficial to deep burns all over the body except face and head. She was conscious and well orientated. Her BP was recorded as 110/70 mm. Pulse was 88 per minute. MLR Ex. PJ was

prepared in this regard. The doctor sent ruqa Ex. PJ/1 in connection with the admission of Ompati. This witness also proved the fitness certificate Ex. PE of Ompati. He also talks of recording of dying declaration by the concerned Magistrate, Bhiwani and proved the carbon copy of the statement Ex. PF/1 bearing his signatures.

ASI Kashmir Singh PW6 had stated that on 25.7.2002, he had received the carbon copy of the statement Ex. PF/1 and the ruqa whereupon formal FIR Ex. PB was registered by him.

PW7 Kanwarpal Parmar has prepared the scaled site plan Ex. PH of the place of occurrence.

PW8 Pawan Kumar clicked the photographs of the place of occurrence which are Exh. P1 to P3, the negatives whereof are Exh. P4 to P6.

Smt. Bhateri Devi wife of Satbir, the real sister of the deceased, who appeared as PW9, did not support the case of the prosecution and was declared hostile.

PW10 Satbir son of Jai Narain husband of Smt. Bhateri also did not support the case of the prosecution and he too was declared hostile.

PW11 Sant Lal son of Matu Ram is also related to Ompati. He was also declared hostile as he did not support the case of the prosecution.

Dr. P.P.Lamoria, PW12 while posted as Medical Officer, General Hospital, Jhajjar has conducted the autopsy on the dead body of Ompati on 26.7.2002. His report runs as under:-

"On examination, length of the body was 165 cms. There was no ligature mark on the neck. It was a dead body of a young female wearing nothing except red coloured glass bangles-3 in the right fore-arm and 2 in the left fore-arm. Burnt blouse, yellow metallic nose pin, red dora (thread) in neck. Venesection was cut on right leg. Rigor mortis was present in all four limbs. Post-mortem staining was present on dependant parts. Burns were superficial to deep present on all over the body sparing the area of right shoulder and upper part of the chest demarcation was present on the body. Singing of the hair was present. Smell of kerosene was present. Burns were approximately 80%. All other organs were healthy except congested spots were present in larynx and trachea.

The cause of death of the deceased was shock due to extensive burns and other complications. Burns were ante-mortem and were sufficient to cause death in

ordinary course of time."

In the opinion of the doctor, the probable duration between death and post-mortem examination was within 6 to 24 hours. He has proved the report Ex. PN, the police request Ex. PN/1 and the inquest report Ex. PN/2.

ASI Rajbir Singh PW13 is the Investigating Officer of this case. The investigation conducted by him has already been eluded to in the preceding paras of our judgment.

The stand taken by the appellants as emerges from their statements recorded under section 313 of the Code of Criminal Procedure is that Ompati was never harassed on account of dowry demand and she had died due to accidental burns and was brought to the hospital where her dying declaration was recorded under coercion and pressure. Jug Lal and Smt. Nathiya (father-in-law and mother-in-law) have taken a specific plea that at the time of alleged incident they were not present in the house. Similarly Ashok appellant has also pleaded that he was on duty on 25.7.2002 in Haryana Roadways Depot, Bahadurgarh. His wife Chanderpati appellant has stated that she was staying separately from her in-laws. The stand taken by Krishna alias Babbu (Nanad) is that on the date of alleged incident, she was residing in her matrimonial home in village Kusumbhi and has been falsely implicated. Pawan Kumar, the husband

has taken a plea that he was away to Surat on the date of incident.

In defence, the appellants have examined Smt. Bharpai Devi, DW1, Sarpanch of village Pokharwas (village of the appellants) who has stated that on the date of alleged incident Ashok appellant was serving in Haryana Roadways at Bahadurgarh. Pawan Kumar was residing at Surat. Deceased Ompati was having some mental problem and had received burn injuries accidentally. She has proved the copies of the Chulla tax Ex. DX and DX/1 of the year 1994 onwards indicating that appellant Ashok was paying the tax.

DW2 Daya Nand of vilage Kusumbhi has stated that Krishna alias Babbu was present in his village on the day of alleged incident. He has proved his affidavit Ex. DX/2 stating that the same was given to the police during investigation.

DW3 Dr. Amarjit Singh, Deputy Medical Superintendent, PGIMS, Rohtak has proved the OPD record (Ex. DX/3) concerning Ompati (since deceased) and deposed that she was examined in Psychitary Department on 24.7.2001 and she lastly visited the hospital on 19.10.2001.

DW4 Ramphal Phogat, Station Supervisor, Haryana Roadways, Rewari Depot has proved the certificate Ex. DX/4 showing that on 25.7.2002 Ashok appellant was present on duty from 9.00 AM to 5.00 PM.

After appreciating the entire evidence, the appellants have been convicted and sentenced by the trial court as indicated herein-above.

We have heard Mr. Baldev Singh, learned Senior Advocate assisted by Shri Sudhir Sharma, Advocate and Mr. Dinesh Arora, learned Assistant Advocate General, Haryana. With their assistance, we have also gone through the entire record.

The primary argument of Mr. Baldev Singh is that the conviction of the five accused under section 302/34 IPC is not sustainable as the dying declaration of Ompati (since deceased) instead of getting corroboration, is, in fact being contradicted by the other set of evidence and therefore, it is not safe to rely upon it. Developing his arguments on this aspect, the learned counsel submits that the dying declaration stands demolished by Smt. Bhateri Devi PW9 real sister of the deceased, Satbir PW10 (husband of Smt. Bhateri) and Sant Lal PW11 as they have not supported the case of the prosecution on any aspect. During the investigation, Smt. Bhateri had deposed that Ompati her sister had stated before her that the appellants (except Pawan Kumar) had burnt her for non fulfilment of demand of dowry. She had rather given a specific part to Jug Lal of pouring kerosene upon Ompati and his wife Smt. Nathiya of litting fire. Satbir PW10 also stated that deceased Ompati had not made any statement in his presence in General Hospital, Bhiwani. He is also a witness to the recovery effected from Jug Lal in pursuance of his disclosure statement. From the evidence of the aforesaid two witnesses, the learned counsel contends that the dying declaration on which the prosecution is

relying deserves to be discarded in toto. Even otherwise it is admitted case that the nearest relations of the deceased had arrived in the hospital before Ompati had made statement to the Judicial Magistrate and, therefore, possibility of tutoring can not be ruled out. Such a doubtful dying declaration should not be made the basis of conviction.

In support of his aforesaid contentions, Mr. Baldev Singh has relied upon judgment of Hon'ble Apex Court rendered in **Raja Ram vs State of Rajasthan** 2005 SCC (Criminal) 1050.

Attacking the prosecution case with regard to the other charges viz sections 304-B and 498-A IPC, for which all the six accused stand convicted, Mr. Baldev Singh submits that the said charge is not sustainable as there is no evidence worth the name which would bring the case of the prosecution within the ambit of dowry death punishable under section 304-B IPC. In order to strengthen his arguments, the learned counsel once again relies upon statements of aforesaid Smt. Bhateri PW9 and Satbir PW10 (who did not support the case of the prosecution) even with regard to the demand of dowry and have categorically stated that Ompati was never harassed by any member of her in-laws in this regard. He contends that may be the aforesaid two witnesses have been declared hostile but if their testimony is scrutinized closely, it can be accepted to the extent consistent with the case of the accused and their defence plea throughout is that Ompati was never harassed or maltreated on account of any dowry demand.

The learned counsel submits that from the aforesaid facts on record, it can safely be concluded that there was no demand of dowry from the side of the accused and Ompati had in fact received accidental burn injuries which ultimately proved fatal. This fact not only exonerates all the six accused of the charge framed against them under sections 304-B IPC and 498-A IPC but at the same time is also enough to dislodge the case qua the five accused convicted under section 302 IPC.

Mr. Baldev Singh then submits that it has come on record that during the investigation, Ashok, Chanderpati wife of Ashok and Krishna alias Babbu daughter of Jug Singh were found innocent. The investigation was verified by DSP also (a senior police official) and therefore, there is no reason to disbelieve that part of the investigation. Even otherwise, the defence plea taken by Ashok appellant is proved by the documentary evidence adduced through Ramphal Phogat, Supervisor Haryana Roadways DW4 who had stated on the basis of the certificate Ex. DX/4 that Ashok was on duty on 25.7.2002 from 9.00 AM to 5.00 PM. The plea of Smt. Chanderpati and Krishna alias Babbu is also proved by DW1 and DW2 respectively. From this set of evidence, the learned counsel wants to develop that once all these infirmities in the case of the prosecution are taken into account collectively especially the fact that the material witnesses of the prosecution have not supported its case, the dying declaration deserves to be rejected altogether.

On the basis of the aforesaid submissions, Mr. Baldev Singh prays for acquittal of all the six accused.

Repudiating the submissions advanced by Mr. Baldev Singh, Mr. Arora submits that there is no reason to disbelieve the dying declaration of Ompati which is recorded by a Judicial Magistrate who had obtained the certificate of fitness from the concerned doctor before recording the said statement. While drawing our attention to the substantive statement of Ms. Roopam, Judicial Magistrate (PW4), the learned State counsel submits that the concerned Judge has also satisfied herself that the patient was fit to make a statement and Ex. PG is a certificate in this regard. She had thus followed all the safeguards. From this the learned counsel wants to develop that it cannot be presumed that the patient was under influence of any of her relative or was tutored before making statement. The learned State counsel then submits that may be the other prosecution witnesses have not supported the case of the prosecution and have been declared hostile but the conviction can safely be maintained on the basis of the dying declaration alone as there is neither any rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration and in the case in hand, the statement (dying declaration) made by Ompati may not be doubted for the purpose of confirming the conviction for main charge of section 302 IPC. It is then submitted by the learned State counsel that the other charges viz 304-B and 498-A IPC are also proved from the statement

of Ompati herself wherein she categorically stated that all the six accused used to harass and torture her on account of dowry and the recent demand soon before her death was of Rs 50,000/-. The case of all the accused, therefore, falls within the mischief of dowry death.

We, first of all, are entering upon detailed discussion with regard to the main charge of section 302 IPC for which all the accused (except Pawan Kumar), the husband stand convicted. The admitted position on record is that Ompati since deceased was brought to General Hospital, Bhiwani on 25.7.2002 at 4.50 PM by Smt. Bhateri and Chanderpati, her sisters-in-law. Chanderpati is the appellant in this case. The occurrence has taken place at about 2.00 PM in village Pokharwas. Although it has not come on record about the distance between village Pokharwas and the General Hospital, Bhiwani but one fact is very clear before us that Ompati was taken to the hospital by Chanderpati appellant within three hours of the occurrence. Another fact which is proved by the documentary evidence is that Ashok, (husband of Chanderpati) was on duty on the alleged date of incident from 9.00 AM to 5.00 PM. Certificate Ex. DX/4 is proved by Ramphal Phogat DW4 an official of Haryana Roadways. Even in the cross-examination this witness had stated that he had brought the original attendance register of Ashok and he had identified the appellant in the Court. We do not find any reason to doubt it. Smt. Bhateri Devi, Sarpanch of village Pokharwas (DW1) stated on oath that

Ashok appellant was residing separately from Jug Lal, father-in-law of the deceased for the last 20/22 years. She proved the chula tax since the year 1994 being paid by Ashok appellant separately. Register (Ex. DX) maintained in this regard was also proved by her. The latest entry from the said register for the year 2002-03 was proved as Ex. DX/1. In order to show Krishna alias Babbu appellant was away from the place of occurrence on the alleged date of occurrence, Daya Nand son of Gordhan of village Kusumbhi had also tendered his affidavit Ex. DX/2. Another fact which has come on record from the statement of ASI Rajbir Singh PW13, the Investigating Officer of this case is that he had stated that during investigation, Ashok, his wife Chanderpati and Krishna alias Babbu were found innocent and the investigation was got verified by DSP and SHO.

Let us now see as to what is exactly stated by Ompati in her dying declaration before the Magistrate. In the beginning she stated that she had married three years prior to the present incident and there was no issue from this wedlock. She then names all the accused stating that they used to torture her on account of dowry and last year (one year prior to the occurrence), she was turned out of the home and she had to stay for 8/9 months in her parental home. It is then stated by her that for the last six months she was residing with her in-laws. She then stated that her Jeth and Jethani, (Ashok and Chanderpati) were living separately but in the same house. If we dissect this portion of dying declaration from the

remaining part which we shall be discussing later, one fact which emerges is that the earlier part of torture was abandoned by the deceased, after she had come back to her matrimonial home and was staying there for the last six months prior to the present incident. She had also stated that her Jeth and Jethani were staying separately. May be that she had stated that they are residing in the same house but from the totality of facts including the defence evidence on record, we can very safely conclude that at least they had no nexus with any demand whatsoever.

Let us now examine the other part of the dying declaration wherein she stated that about 2/3 months prior to the present occurrence her in-laws had asked her to bring Rs 50,000/- from her father. She had not specifically named anybody. So far as the main occurrence is concerned, she initially stated that her in-laws had picked up a quarrel with her at about 2.00 PM and then she specifically named her father-in-law and mother-in-law ascribing them the role that Jug Lal accused had sprinkled kerosene oil and then her mother-in-law had set her ablaze. At that time Pawan was away to Surat (another State). So far as participation of Krishna alias Babbu is concerned, it has come in the statement of Ompati that she had come to her parental home 10 days ago. She involved her Jeth, Jethani and Nanad (Ashok, Chanderpati and Krishna alias Babbu) stating that when she tried to run out her father-in-law had closed the door and upon her raising alarm of rescuing the aforesaid three persons stated that

she should be burnt. The exact words stated are “let I be burnt”.

We are now assessing the arguments of Mr. Baldev Singh after recapitulating the entire scenario before us. His main contention is that it is not safe to maintain the conviction of the charge of section 302 IPC on the basis of the dying declaration alone which is not free from doubt as an attempt has been made by Ompati to falsely implicate at least aforesaid three persons who otherwise were found innocent during investigation. In order to demolish the case of the prosecution in this regard the learned counsel has also relied upon the testimony of real sister and brother-in-law (Jija) of the deceased (since declared hostile) but we are of the firm view that on this ground alone the entire dying declaration of Ompati is not to be discarded. So far as mental condition of the deceased is concerned, we do not feel any difficulty in holding that she was in a fit state of mind to make a statement before the concerned Magistrate who even otherwise had obtained the fitness certificate of the doctor. She had also verified the mental state of the patient before recording her statement. No doubt she was having 80% superficial deep burns but the doctor who was treating her found her to be fit to make a statement. We, therefore, do not doubt the manner in which the statement of Ompati was recorded as all safeguards were observed by the concerned Judge.

May be the dying declaration of Ompati appears to be true on the face of it, yet an analytical examination of its tenor when brought to its

logical end shows that it can be splitted into two parts with regard to the implication of individual accused.

Legally there is no bar in acting on a dying declaration as held in **Narain Singh and another vs State of Haryana**, 2004(2) Recent Criminal Reports 933 (SC) wherein their Lordships have observed in para No. 7 as under:-

> "Though in law there is no bar in acting on a part of the dying declaration, it has to pass the test of reliability. Section 32(1) of the Indian Evidence Act, 1872 (in short 'the Evidence Act') is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination it is not creditworthy. A dying declaration made by a person on the verge of his death has a special sanctity as at that solemn moment a person is most unlikely to make any untrue statement. The shadow of impending death is by itself guarantee of the truth of the statement of the deceased regarding circumstances leading to his death. But at the same time the dying declaration like any other evidence has to be tested on the touchstone of credibility to be

> acceptable. It is more so, as the accused does not get an opportunity of questioning veracity of the statement by cross-examination. The dying declaration if found reliable can form the basis of conviction."

In the aforesaid case, four persons were convicted on the basis of dying declaration by the trial Court. The High Court in appeal had acquitted two persons and maintained the conviction of the remaining two accused. Although the Supreme Court has doubted the entire dying declaration and acquitted the remaining two accused as well holding that the dying declaration does not pass the test of reliability but it was observed that there is no bar of acting on a part of the dying declaration.

The Hon'ble Supreme Court while evaluating the dying declaration as good piece of evidence has gone to the extent of observing in **Godhu and another v. State of Rajasthan,** AIR 1974 SC 2188, that there may be cases wherein the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part and therefore, it is not correct to hold that if a part of the dying declaration has not been proved to be correct, it must necessarily result in the rejection of the whole of the dying declaration. For reference para no. 7 from the aforesaid judgment is reproduced as under:-

> "It is not correct to hold that if a part of the dying

declaration has not been proved to be correct, it must necessarily result in the rejection of the whole of the dying declaration. In cases wherein the part of the dying declaration which is not found to be correct is so indissolubly linked with the other part that it is not possible to sever the two parts, the court would be justified in rejecting the whole of the dying declaration. There may, however, be other cases wherein the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part. In the last mentioned cases the court would not normally act upon a part of the dying declaration, the other part of which has not been found to be true, unless the part relied, upon is corroborated in material particulars by other evidence on record. If such other evidence shows that part of the dying declaration relied upon is correct and trust-worthy, the court can act upon that part of the dying declaration despite the fact that another part of the dying declaration has not been proved to be correct."

In view of aforesaid judgments of the Hon'ble the Apex Court there is no dispute with regard to the proposition of law that a part of dying declaration can be acted upon if it passes the test of reliability and the other part can be rejected if it does not depend upon the correctness of the other.

Following the aforesaid rationale, we are now examining that part of the dying declaration which concerns Ashok, his wife Chanderpati and Krishna alias Babbu accused to conclude logically as to whether their case can be segregated from Jug Lal and his wife Nathiya so far as main charge of section 302 IPC is concerned. We are also appreciating the fact as to whether the said segregation depends upon the correctness of the other part qua the main occurrence or not.

The admitted position before us is that the aforesaid three accused are not ascribed any active participation in the occurrence. They have not rendered any help to Jug Lal and Nathiya accused, except that it is stated in the last 2/3 lines by Ompati that they (appellants) had uttered that she should be burnt that too after Jug Lal had closed the door. There is another tilting circumstance in favour of Ashok and his wife from the dying declaration itself, wherein it is mentioned that they both were staying separately. We cannot just ignore another material fact which is apparent on the record that Chanderpati appellant had got admitted Ompati in General Hospital, Bhiwani. Had she actively participated in the

occurrence alongwith her in-laws, she would not have taken the deceased to the hospital for treatment. Bhateri PW9 the real sister of the deceased has also categorically stated in her cross-examination that she was informed by Chanderpati about the incident. Her husband Ashok was not present in the house and was on duty at the time of alleged occurrence as is established from the certificate Ex. DX/4 proved by Ramphal Bhogat (official of Haryana Roadways) who had stepped into witness box as DW4.

We are now appreciating the case of Krishna alias Babbu, the sister-in-law (Nanad) of the deceased. She too has not been attributed any specific role of her active participation in the commission of the offence. Moreover the aforesaid three accused were also found innocent during the investigation.

Although no one at the time of death is presumed to tell a lie as is the philosphy underlying admittance in dying declaration but in a given case of bride burning, where there is background of bitterness in the relations and marital discord between the spouses, the woman who had been the victim of harassment and torture over a period of time, the court should put itself on guard while logically examining the dying declaration. Therefore, the principle that a dying person would not normally tell a lie, does require serious examination. One cannot rule out the possibility of implication of certain persons purely out of sense of vendetta or hatred. In the present case, a minute examination of Ex. PF, shows that Ompati bore

some hatred towards all the six accused initially but so far as the main occurrence is concerned, the entire blame has been put on father-in-law and mother-in-law ascribing them very specific role and the only part attributed to Ashok, Chanderpati and Krishna alias Babbu is of standing outside the door uttering that she (Ompati) be burnt.

After testing the case of the prosecution from all angles and aspects and applying the ratio of the judgment rendered in **Naresh**'s case (supra) and **Godhu**'s case (supra), we are of the view that the role of these three accused is not indissolubly linked and therefore, the splitting of the dying declaration qua them on the basis of aforesaid evidence before us, would not affect the correctness of the other part where specific involvement/implication of Jug Lal and Nathiya accused is depicted. The present crime is in "personam" and not "vicarious". Therefore, by way of abundant caution, we extend benefit of doubt to them and hold them not guilty of charge of section 302 IPC.

Although we have splitted the dying declaration so far as involvement of aforesaid three accused is concerned, yet we are of the firm view that case of Jug Lal (father-in-law) and Nathiya (mother-in-law), is entirely on different facts because of their active participation in this occurrence and the said part of the dying declaration passes the test of reliability. It does not depend upon the correctness of the other part wherein participation of other three is depicted. We, therefore, accept the said part

of the dying declaration for upholding the conviction of Jug Lal and Nathiya accused for the charge of section 302/34 IPC.

We may observe here that the judgment rendered in **Raja Ram**'s case (supra) cited by Mr. Baldev Singh, in support of rejection of the dying declaration in totality is not applicable to the facts of the present case in the light of the followed up discussion.

We are now left with the second charge of sections 304-B and 498-A IPC for which all the six accused have been convicted. In order to bring home the said charges, the prosecution agency during investigation of this case had recorded statement of PW9 Smt. Bhateri, real sister of the deceased and PW10 Satbir (husband of Smt. Bhateri) and one Sant Lal PW11 who was cousin of the deceased. In our view, the main witnesses are Smt. Bhateri and her husband Satbir and both have not supported the case of the prosecution with regard to harassment or cruelty ever meted out to the deceased on account of any dowry demand. Rather they had categorically stated that the accused had never harassed Ompati over the dowry demand. We are, therefore, now left with the solitary statement (Ex. PF) of the deceased to appreciate this aspect in the right perspective. Although Ompati had stated in her statement that from the time of marriage which was three years old prior to the occurrence all the six accused used to torture her over the issue of dowry yet it is no-where stated that what was the specific demand made by any of the accused. She also did not allege any

harassment at the hands of Ashok, his wife Chanderpati and Krishna alias Babbu her sister-in-law after she had come back to her matrimonial home after staying with her parents for about 8/9 months. She had also stated that Ashok and his wife were residing separately, may be in the same house. From her statement we find one fact that 2/3 months prior to the occurrence, her in-laws had asked her to bring Rs 50,000/- from her father. It is settled legal position that for the purpose of proving dowry death falling within the mischief of section 304-B IPC, the initial burden would always be on the prosecution to show that un-natural death had occurred within the stipulated period in the matrimonial home of the deceased in connection with demand of dowry and that too soon before the occurrence. In **Kunhiabdulla and another vs State of Kerala** (2004) 4 SCC, 13, their Lordships of Supreme Court have observed that no straight jacket formula can be laid down as to what would constitute a period of "soon before" the occurrence. It has to be determined by courts, depending upon facts and circumstances of each case. Existence of a proximate and live link between cruelty and death, held, essential. We have very closely scrutinized the dying declaration and conclude that the aforesaid three accused who were found to be innocent and not involved in the main charge of section 302 IPC, had also no nexus with the demand of dowry so as to maintain their conviction under section 304-B IPC. On the same rationale, we observe that their conviction under section 498-A

IPC also deserves to be disturbed.

We are now dealing with other three accused namely Jug Lal, his wife Nathiya, (parents-in-law) and Pawan Kumar, the husband. Pawan Kumar has been convicted under section 304-B and 498-A IPC. No doubt in the dying declaration Ompati deceased had stated that her husband had gone to Surat one month prior to the present incident, but he was staying with his parents when a demand for Rs 50,000/- was raised which is about 2-3 months prior to the occurrence. From these facts, it can be categorically said that her husband was a party to the aforesaid demand of Rs 50,000/- . From words 'my in-laws' we can safely infer that the deceased was pointing towards her father-in-law, mother-in-law and husband who were staying together. No doubt, the absence of the husband on the fateful day has saved him from the punishment of the main offence of murder, but so far as charges under section 304-B or 498-A IPC are concerned, in our considered view, he has no escape and is bound to sink with his parents. These three accused, can neither derive any advantage from the evidence of hostile witnesses nor from the factum of our disbelieving the dying declaration in part qua the other three accused. Therefore, the conviction of Jug Lal, Nathyia and Pawan accused deserves to be maintained as already recorded by the learned trial court.

We would like to observe here that since Jug Lal and Nathyia

have been held responsible for causing death of their daughter-in-law on account of dowry demand and have confirmed their conviction under section 302/34 IPC being the Division Bench, but their conviction for the offence punishable under section 304-B IPC is not maintainable although they were charged for both the offences. However, no prejudice is caused to both the accused as the sentence awarded under section 304-B IPC is seven years R.I. which is awarded for the main charge of section 302 IPC. Similarly, the sentence awarded under section 498-A IPC has also been ordered to run concurrently with the other sentences.

So far as Pawan Kumar appellant is concerned, as stated above, he has been convicted under section 304-B/498-A IPC only for which he was charged. We hereby confirm his conviction and sentence as already recorded by the trial court.

As a sequel to the aforesaid discussion, the net result which now surfaces is that the instant appeal is partly allowed to the extent that the conviction and sentence of Jug Lal, Nathiya and Pawan Kumar son of Jug Lal is maintained as recorded by the learned trial court whereas conviction and sentence of appellant Ashok, his wife Chanderpati and Krishna alias Babbu is set-aside qua all the charges. They now stand acquitted.

We are informed that all the accused are in custody. Ashok, Chanderpati and Krishna alias Babbu accused shall be released forth with, if not required in any other case.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

October 30, 2006
'ask/dalbir'